STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of B.T.B, Minor.

JENNIFER DRESCOSKY,

Petitioner-Appellee,

v

GIACOMO BAVUSO,

Respondent-Appellant.

UNPUBLISHED
May 22, 2003

No. 244971
Livingston Circuit Court
Family Division
LC No. 01-003558-AD

Before: Whitbeck, C.J., and White and Donofrio, JJ.

MEMORANDUM.

Respondent appeals as of right from the trial court's order terminating his parental rights to the minor child under § 51(6) of the Adoption Code, MCL 710.51(6). We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

Respondent argues that the trial court erred both in finding that he failed to substantially comply with a support order, and that he failed to regularly and substantially visit, contact or communicate with his child while having the ability to do so. We disagree.

We review the trial court's factual findings for clear error. *In re Caldwell*, 228 Mich App 116, 121; 576 NW2d 724 (1998).

Although respondent asserts that he satisfied 74.2 per cent of his obligation under a child support order, that calculation is based in large part on the crediting of his account (to reduce a significant arrearage) for a dirt bike that respondent's mother mostly paid for. He also was credited for negotiating his weekly support obligation downward after threatening to leave the state and become uncollectable. A large amount of respondent's payments were made only after he posted bonds to avoid being incarcerated when enforcement actions were commenced. Respondent never made any weekly payments to the Friend of the Court as required by the support order, although he did make some payments directly to petitioner. We find no clear error in the trial court's determination that respondent failed to substantially comply with the support order.

Respondent also argues that the trial court erred in finding that he had the ability to contact his child where petitioner refused to allow a telephone call in August 2001. Where a custodial parent prevents contact, the noncustodial parent can be found to have lacked the ability to contact the child. *In re ALZ*, 247 Mich App 264, 273-276; 636 NW2d 284 (2001). This case is distinguishable from *In re ALZ*, in which the father made repeated requests to visit with his child, but was "consistently rebuffed" by the mother. *Id.* at 277. In this case, the evidence indicated that petitioner begged respondent for years to have contact with his son. Nonetheless, he had only sporadic contact (only one gift, no letters or cards, and infrequent visits). When his son was hospitalized in a psychiatric unit, respondent was not there for him. Under the circumstances, it was not inappropriate for petitioner to deny respondent the requested contact in August 2001. Moreover, this single occasion did not impair respondent's ability to visit, contact, or communicate with his child during the remaining statutory two-year period. As the trial court stated, "You [should] establish a regular relationship with him. You don't just drop in on him when you choose to and expect him to look to you as his father." The trial court did not clearly err in finding that respondent had the ability to regularly and substantially visit, contact or communicate with his child, and failed to do so.

Affirmed.

/s/ William C. Whitbeck
/s/ Helene N. White
/s/ Pat M. Donofrio